

# NATIONAL MEDIATION BOARD

ANNUAL PERFORMANCE  
AND ACCOUNTABILITY  
REPORT FY2012

## MEDIATION AND ADR

LARRY GIBBONS,  
Director

### MANAGEMENT DISCUSSION & ANALYSIS

14



The Office of Mediation and ADR Services (OMAS) manages mandatory Mediation of collective bargaining disputes pursuant to statutory authority under “Section 6” of the Railway Labor Act (RLA), which is applicable to both the airline and railroad industries. The ADR component of OMAS offers voluntary dispute resolution programs to the parties including facilitation, grievance mediation, training, and other dispute resolution efforts.

**NOTE** A complete list of acronyms is given at the back of this Annual Report.

# NATIONAL MEDIATION BOARD

ANNUAL PERFORMANCE  
AND ACCOUNTABILITY  
REPORT FY2012

---

## MEDIATION OVERVIEW

### MANAGEMENT DISCUSSION & ANALYSIS

---

15

The RLA requires labor and management to exert every reasonable effort to make and maintain collective bargaining agreements. Initially, the parties must give notice to each other of their proposals for new or revised agreements. Direct negotiation between the parties must commence promptly and continue in an effort to conclude a new collective bargaining agreement or to narrow their differences. Should parties fail to reach agreement during Direct Negotiations, either party or the parties jointly, may apply to the NMB for Mediation. Following receipt of an application, the NMB promptly assigns a mediator to assist the parties in reaching an agreement. [An application for NMB mediation services may be obtained from the Agency's web site at [www.nmb.gov](http://www.nmb.gov).]

The NMB is obligated under the Act to use its "best efforts" to bring about a peaceful resolution of the dispute. If such efforts do not settle the dispute, the NMB advises the parties and offers Interest Arbitration (proffers arbitration) as an alternative approach to resolving the remaining issues. If either party rejects this offer of binding arbitration, the NMB releases the parties from formal Mediation. This release triggers a thirty-day Cooling Off period, during which the Agency continues to work with the parties to achieve a consensual solution to the dispute. However, if an agreement is not reached by the end of the thirty-day period and the U.S. President does not establish an Emergency Board, the parties are free to exercise lawful self-help, which includes carrier-imposed working conditions or a strike by the union/organization.

For a flow-chart of Mediation procedures, see the Mediation section of the NMB website at [www.nmb.gov](http://www.nmb.gov). For more information on Emergency Boards, see the PEB section of this Annual Report.

# NATIONAL MEDIATION BOARD

ANNUAL PERFORMANCE  
AND ACCOUNTABILITY  
REPORT FY2012

## MANAGEMENT DISCUSSION & ANALYSIS

16

### MEDIATION HIGHLIGHTS

In FY 2012, while mediators continued to face difficult bargaining situations familiar from previous years, the merger of United Airlines and Continental Airlines and the bankruptcy of American Airlines provided more complex and challenging mediation circumstances. Settlements became more difficult as legacy air carriers continued to remake themselves through bankruptcies and mergers. Airline profits continued to be hard-earned but, profits of any size raise employee expectations at the bargaining table.

In national handling, where freight railroads bargain with unions as a group, the parties were unable to come to an agreement in the mediation process. This ultimately culminated in a release from mediation and in the establishment of a Presidential Emergency Board (PEB). The recommendations of the PEB became the basis for final settlements of all the cases.

Carriers and organizations, both air and rail, remained engaged in battles over higher wages and better benefits versus the ability to pay. Once again, mediation was increasingly important in assisting the parties to reach Collective Bargaining Agreements, and also more difficult, testing the skills of the mediator corps. Mediation cases docketed and closed in FY 2012 exceeded FY 2011 levels and the five-year docketed/closed averages.

#### EXPEDITED MEDIATION

The Board introduced Expedited Mediation as a trial program during FY 2011. The program allows, for cases that meet the necessary criteria, the assignment of mediatory resources for a short defined period of time for concentrated mediation in hopes of reaching a quick settlement. In Fiscal Year 2012, the Agency successfully used the test program with two groups, Hawaiian Airlines/Association of Flight Attendants (AFA) and United Airlines/AFA.

#### LEGACY CARRIERS

Mediation efforts with the Legacy Carriers continued to be complex and difficult, as noted above, due to the bankruptcy filing of American Airlines and the merger of United and Continental. Further complicating our efforts was an attempt by USAirways to merge with American Airlines. We were successful in assisting United in reaching agreements with its Flight Attendants (represented by AFA) and its mechanics (represented by the International Brotherhood of Teamsters—IBT). Additionally, an agreement in principle was reached on a combined contract between the pilots of United and Continental. At Continental, agreements were also reached with the Mechanics represented by the IBT, and at USAirways with the mechanics represented by International Association of Machinists—IAM.

#### COOLING-OFF PERIODS

The five Class I Railroads and thirty-two Short Line and Regional Railroads represented by the National Carrier's Conference Committee (NCCC) and eleven of their Unions were released from mediation in late FY 2011. Self-help was available in early FY 2012; however, President Obama named a Presidential Emergency Board, the actions of which helped lead to agreements in all cases.

#### SELF-HELP ACTIVITY

There was no self-help activity in FY 2012.

# NATIONAL MEDIATION BOARD

ANNUAL PERFORMANCE  
AND ACCOUNTABILITY  
REPORT FY2012

## MANAGEMENT DISCUSSION & ANALYSIS

---

17

---

### SETTLEMENTS

Several significant cases were settled in FY 2012 with assistance from NMB mediators, including: Omni Air/IBT, Air Wisconsin/IAM, PSA/AFA, CommutAir/Air Line Pilots Association (ALPA), and Southwest/Transport Workers Union (TWU). Significant rail cases that closed besides National Handling include: Still Water Central/United Transportation Union (UTU), Progressive Rail/UTU, Illinois Central/Brotherhood of Railroad Signalmen (BRS), Panhandle Northern Railroad/Brotherhood of Locomotive Engineers and Trainmen (BLET) and Wisconsin Central/BRS.

### PENDING CASES

Significant resources will continue to be devoted to open cases at the legacy airline carriers, which account for a significant portion of all cases in mediation. Concessions, bankruptcies, and mergers continue to solidify employee expectations of restoration or partial recovery of wages and benefits. Other airline cases in mediation include PSA/ALPA, Piedmont/ALPA & AFA, Spirit/AFA, Express Jet/IAM & IBT & TWU, Sun Country/ALPA & IBT and American Eagle/TWU (currently in bankruptcy).

On the rail side, the Commuter Railroads are entering another round of bargaining. Currently 30 percent of the open mediation cases involve Southeastern Pennsylvania Transportation Authority (SEPTA), Long Island Railroad and Metro North Railroad. AMTRAK is also in mediation with the UTU and the Passenger Rail Labor Bargaining Coalition (PRLBC—a coalition of several unions). Additionally, several Regional and Short Line Railroads are in mediation, including PAR/BLET, Illinois Central/UTU, Transportation Communications International Union (TCU) & Brotherhood of Maintenance of Way Employees (BMWED), Grand Trunk Western/BMWED & TCU, and the Ohio Central Locomotive Roster (OHCR)/BLET.

# NATIONAL MEDIATION BOARD

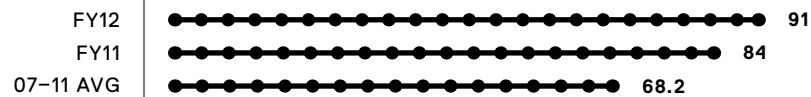
ANNUAL PERFORMANCE  
AND ACCOUNTABILITY  
REPORT FY2012

## MANAGEMENT DISCUSSION & ANALYSIS

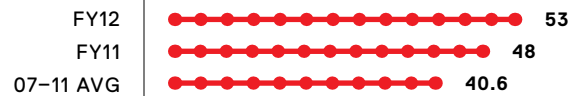
18

### MEDIATION CASES

#### START-PENDING



#### NEW



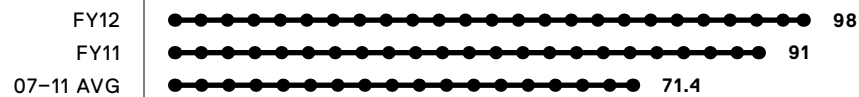
#### SUM



#### CLOSED



#### END-PENDING



---

## ADR OVERVIEW

In addition to statutory mediation and arbitration services under Sections 6 and 3 of the RLA, the NMB provides voluntary Alternative Dispute Resolution (ADR) services. ADR services include facilitation, training, grievance mediation, and an online dispute resolution (ODR) program, applying technology to the dispute resolution process.

The primary goal of the NMB's ADR program is to assist the parties in learning and applying more-effective, less-confrontational methods for resolving disputes. Another goal is to help the parties resolve more of their own disputes without outside intervention, and to use appropriate ODR technology to increase the efficiency and reduce the cost of dispute resolution efforts for the parties.

The NMB established its ADR Services program with the conviction that use of ADR and ODR methods would result in fewer cases progressing to statutory mediation, reduce and narrow the issues which the parties bring to mediation, and positively affect working relationships among the parties.

A complete description of and an application for ADR services may be found on the Agency's web site.

## ADR HIGHLIGHTS

Alternative Dispute Resolution Services (ADRS) continued to develop and deliver a wide range of services, including training (T cases), facilitation (F cases), grievance mediation (GM cases), facilitated problem solving (FPS) and Online Dispute Resolution (ODR).

During FY 2012, ADR Services continued to offer special training programs and facilitation efforts outside of traditional grievance mediation and facilitation work. The promotion of the use of ODR tools and training has greatly increased demands for ADR services such as Online Workspaces for the parties, Online Video Conferencing, and Pilot Programs in conjunction with the Office of Arbitration including online arbitrations and “submissions only” arbitrations.

ADR Services provided grievance mediation training and services that, again in FY 2012, aided in a reduction of the number of cases going to arbitration or the bargaining table. Partnering with the Office of Arbitration Services, ADR staff offered expedited Grievance Mediation and Arbitration processes designed to increase the use of online technology and move cases through the system quickly.

Also in FY 2012, NMB's online learning program, the Lyceum, was further developed and enhanced to offer online training to all parties. The NMB Lyceum allows any party, relevant practitioner, and the general public to access the training material at no cost and without having to use passwords or other identifying information. In collaboration with the Air Line Pilots Association, ADR staff produced a new Grievance Mediation video that shows a simulation of a grievance mediation session and provides training to all viewers on the NMB ADR process. The video will soon be accessible on the NMB Lyceum and accessible from the NMB website at [www.nmb.gov](http://www.nmb.gov).

### TRAINING

During FY 2012 ADR staff continued to refine and update standard training offered by the NMB, including Grievance Mediation, Facilitated Problem Solving and specialized training tailored to the parties' needs, such as Team Building and System Boards of Adjustment. In addition, special training in expedited mediation/arbitration processes was requested by the parties and delivered by NMB Mediation/ADR staff.

### GM FACILITATION AND NEGOTIATION

During FY 2012, the Mediation/ADR staff engaged in direct delivery of dispute resolution services as facilitators in Grievance Mediation, Interest-based Contract Negotiations, and as trainers in a variety of other programs.

A special effort was made to merge grievance mediation with expedited arbitration. Successful GM/expedited projects are ongoing at Wisconsin Central with the BLET, Union Pacific with the BLET, and Amtrak with the UTU and BLET. These cases help to reduce the number of grievances that would normally go to Arbitration.

# NATIONAL MEDIATION BOARD

ANNUAL PERFORMANCE  
AND ACCOUNTABILITY  
REPORT FY2012

## MANAGEMENT DISCUSSION & ANALYSIS

---

21

---

### ODR RESEARCH AND DEVELOPMENT

The NMB continued its exploration of online tools to assist mediators, arbitrators and NMB employees in general. Additional research and development in the area of social media and social networking is being analyzed for potential use in ADR development at the NMB.

During FY 2012, online tools were used in training, drafting of agreements, preparation for face-to-face negotiations, agenda setting, and online arbitration for a variety of carriers and organizations. Negotiating parties used comprehensive online workspaces provided by the NMB to manage preparation for negotiations, and to manage information during contract negotiations or grievance mediation. Carriers and organizations actively using NMB online workspaces include: AE/ALPA, CSXT/American Train Dispatchers Association (ATDA), CSXT/UTU, World/IBT, Omni Air/IBT, and Air Wisconsin/IAMAW.

### ONLINE ARBITRATION

The NMB continued to develop and use its web-based video and document sharing capabilities. Virtually all executive sessions during FY 2012 for the NRAB were held using ODR technology.

### PARTNERSHIPS

In partnership with Dominican University and Cornell University, the ADR staff designed and delivered a number of trainings and presentations that provided quality training and complemented the employees/students career development. The partnerships have successfully created a shared value for all participants by making high quality training available to NMB employees at no charge to the agency.

In addition to training programs, these partnerships have provided analyses, evaluations and feedback to assist the NMB in strengthening grievance mediation promotion to railroads and their respective unions. Finally, the partnership arrangements have enhanced the NMB's internship Program.



# NATIONAL MEDIATION BOARD

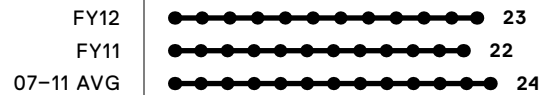
ANNUAL PERFORMANCE  
AND ACCOUNTABILITY  
REPORT FY2012

## ADR CASES

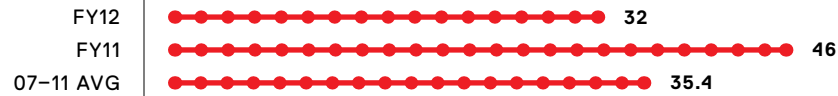
### MANAGEMENT DISCUSSION & ANALYSIS

22

#### START-PENDING



#### NEW



#### SUM



#### CLOSED



#### END-PENDING

